

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 04-O-10821-PEM
)	
KELLEY KATHLEEN STIMPEL)	DECISION AND ORDER SEALING
MARTINEZ,)	CERTAIN DOCUMENTS
)	
Member No. 161409,)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this original disciplinary proceeding, respondent Kelley Kathleen Stimpel Martinez (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that she be placed on probation for three years subject to certain conditions.

PERTINENT PROCEDURAL HISTORY

Following the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar of California's Office of the Chief Trial Counsel (State Bar) on July 22, 2005, respondent requested referral for evaluation of her eligibility for participation in the State Bar Court's ADP. There being no opposition by the State Bar, the Honorable Pat E. McElroy

granted respondent's request, and this matter was referred to the ADP before the undersigned judge.

In furtherance of her participation in the ADP, respondent contacted the State Bar's Lawyer Assistance Program (LAP) on September 20, 2005, to assist her with her mental health issue and signed a LAP Participation Plan on January 5, 2006. Respondent also submitted a declaration to the court on January 6, 2006, which established a nexus between respondent's mental health issue and her misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in January 2007. The Stipulation sets forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated January 16, 2007, formally advising the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent and her counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on January 18, 2007.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. On April 27, 2010, after receiving a satisfactory recommendation from a mental health professional, the court filed an order finding that respondent has successfully completed the ADP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated in one matter to willfully violating rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California by not maintaining funds in trust in her client trust account and to committing an act involving moral turpitude, dishonesty and/or corruption in willful violation of section 6106 of the Business and Professions Code by misappropriating by gross negligence for her own use and benefit at least \$11,663.40 of client funds. Respondent further stipulated to willfully violating rule 4-100(B)(3) by willfully not providing an accounting to her client as requested.¹

In aggravation, respondent's misconduct involved multiple acts of misconduct. In addition, trust property or funds were involved, and respondent deprived her client of the use of most of the settlement funds for 21 months and respondent's client was still owed money from that settlement four years later. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iii).)²

In mitigation, respondent has no prior disciplinary record (std. 1.2(e)(i)), and she displayed spontaneous cooperation and candor with the State Bar during the disciplinary investigation and proceedings (std. 1.2(e)(v)). In addition, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the

¹ Respondent has furnished proof to the satisfaction of this court that she has repaid her client in full, including interest.

² All further references to standard(s) or std. are to this source.

highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.2, and 2.3 and *Howard v. State Bar* (1990) 51 Cal.3d 215; *Bates v. State Bar* (1990) 51 Cal.3d 1056; *Greenbaum v. State Bar* (1987) 43 Cal.3d 543; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403 and *Waysman v. State Bar* (1986) 41 Cal.3d 452.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent **Kelley Kathleen Stimpel Martinez**, State Bar Number 161409, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that she be placed on probation³ for a period of three (3) years subject to the following conditions:

- a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or

³ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

- c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
- d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session;
- g. Respondent must comply with all provisions and conditions of her Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP

information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP; and

- h. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - 1. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
 - 2. Respondent has kept and maintained the following:
 - i. a written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - 3. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct of the State Bar of California.

At the expiration of the period of probation, if **Kelley Kathleen Stimpel Martinez** has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that **Kelley Kathleen Stimpel Martinez** be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is further recommended that

Kelley Kathleen Stimpel Martinez be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June ____, 2010

PAT McELROY
Judge of the State Bar Court